

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex. rel.
WILLIAM L. FRY,

Relator,
v.
FIRST INVESTMENT COMPANY, et al.,
Defendants.

CIVIL ACTION
No. 04-1316
(Judge McLaughlin)

DEFENDANT FIRST INVESTMENT'S MOTION TO DISMISS

Defendant First Investment Company ("First Investment") hereby moves to dismiss Relator William L. Fry's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 9(b).

In support of this Motion, First Investment submits, in conjunction with Defendant EverHome Mortgage Company, the accompanying Defendants' Memorandum in Support of Their Motions to Dismiss. As explained in that memorandum, this Court is without jurisdiction to hear these claims, the Complaint fails to state a claim upon which relief can be granted, the Complaint fails to comply with the pleading requirements of Rule 9(b), and many of the claims are time-barred.

WHEREFORE, for the reasons stated above and in the Memorandum supporting this Motion, First Investment respectfully requests that the Court dismiss the Complaint in its entirety.

Respectfully submitted,

FIRST INVESTMENT COMPANY,

By: _____

Jennifer E. Watson, Esq.
WILBRAHAM LAWLER & BUBA
Two Gateway Center, 17N
Pittsburgh, PA 15222
TEL: (412) 255-0662
FAX: (412) 255-0505

Attorney for Defendant First
Investment Company

OF COUNSEL:

Roberto M. Braceras, Esq.
Goodwin | Procter LLP
Exchange Place
Boston, MA 02109
Tel: 617/570-1000

Sarah S. Keast, Esq.
Goodwin | Procter LLP
901 New York Avenue, N.W.
Washington, D.C. 20001
Tel: 202/346-4000

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Malcolm L. Pollard, Esq.
485 Westlake Road #119
Erie, Pennsylvania 16505
Tel: 814/838-8258
Fax: 814/838-8452

Attorney for Relator

Mary Beth Buchanan, United States Attorney, Western District of Pennsylvania

Robert L. Eberhardt, Assistant United States Attorney
U.S. Post Office and Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7353
(412) 644-6995 (fax)

David Leviss, Trial Attorney
U.S. Department of Justice
Commercial Litigation Branch
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
(202) 353-2680
(202) 307-3852 (fax)

Attorneys for the United States of America

s/ Jennifer E. Watson